

Applicant is advised that the previous examiner of this application is no longer with the USPTO and the undersigned Primary Examiner has been assigned to this application.

After review of the claimed invention, prior art of record, and the Office actions and applicant's response of record, it has been determined that a new lack of unity requirement must be made. Group I in the previous requirement of 10/5/2009 is actually broad enough to include all the other groups, which is the undoing error of the requirement. The following new lack of unity requirement is set forth.

REQUIREMENT FOR UNITY OF INVENTION

As provided in 37 CFR 1.475(a), an international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an international application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim. See 37 CFR 1.475(e).

WHEN CLAIMS ARE DIRECTED TO MULTIPLE PROCESSES, PRODUCTS, AND/OR APPARATUSES

Products, processes of manufacture, processes of use, and apparatuses are different categories of invention. When an application includes claims to more than one product, process, or apparatus, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the "main invention" in the claims. In the case of non-compliance with unity of invention and where no additional fees are timely paid, the

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international search and/or international preliminary examination, as appropriate, will be based on the main invention in the claims. See PCT Article 17(3)(a), 37 CFR 1.475(d), 37 CFR 1.476(c) and 37 CFR 1.488(b)(3).

As provided in 37 CFR 1.475(b), an international application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

- (1) A product and a process specially adapted for the manufacture of said product; or
- (2) A product and process of use of said product; or
- (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
- (4) A process and an apparatus or means specifically designed for carrying out the said process; or
- (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

Otherwise, unity of invention might not be present. See 37 CFR 1.475(c).

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

Group I, claims 1-12 (in part), 13, 15 (in part), 16, 18-19 (in part), 41 (in part), 46-49 (in part), 54-57 (in part), drawn to a method for controlling fungal disease on a herbicide resistant wheat crop.

Group II, claims 1-12 (in part), 14, 15 (in part), 17, 18-19 (in part), 41 (in part), 46-49 (in part), 54-57 (in part), drawn to a method for controlling fungal disease on a herbicide resistant soybean crop.

Group III, claims 1-12 (in part), 15 (in part), 18-19 (in part), 41 (in part), 46-49 (in part), 54-57 (in part), drawn to a method for controlling fungal disease on a herbicide resistant crop that is not wheat or soybean.

Group IV, claim 20, drawn to a harvested crop produced by treating a herbicide resistant crop with glyphosate.

The corresponding technical relationship involving the four inventions is in the use of glyphosate in herbicide (glyphosate) resistant crops. However, this technical feature is a well-known prior art method of using glyphosate/herbicide on glyphosate/herbicide-resistant crop. **Harikrishnan et al.** (cited in the Office action of 10/7/2010) disclose that glyphosate-tolerant and glyphosate-sensitive soybean cultivars reacted *similarly* to fungal diseases root rot and damping off caused by *Rhizoctonia solani*. **Sanogo et al.** (also cited in the same Office action) disclose similar results with other cultivars of glyphosate-tolerant and glyphosate-nontolerant soybean: they responded similarly to infection by *Fusarium solani* after herbicide application. Therefore, it is the specific matching of a specific herbicide resistant crop plant with a specific herbicide and specific fungal pathogen that defines a potential contribution that an invention group makes over the prior art, as set forth above in Groups I to III. As for Group IV, there can be no novelty for such glyphosate treated harvested crop that is glyphosate resistant, whether or not it was first infected with a fungal pathogen. Prior art such as **US 6,903,251** (see claims 21-22) or any prior art that discloses undiseased herbicide resistant crop anticipates or renders obvious claim 20; and consequently, there is no special technical feature that defines a contribution that this invention makes over the prior art.

Applicant is further required, for the reasons discussed above, to elect a single disclosed species of (1) the herbicide that the plant is resistant against, and (2) the fungal pathogen.

For these reasons, the claims are found to lack unity of invention.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention or species.

Should applicant traverse on the ground that the inventions have unity of invention (37 CFR 1.475(a)), applicant must provide reasons in support thereof. Applicant may submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. Where such evidence or admission is provided by applicant, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

It is noted for the record that the Examiner attempted to expedite prosecution at the outset by proposing a claim amendment for further review. See the attached Interview Summary. No agreement could be reached, and upon further review, the Examiner has determined that a new lack of unity determination must first be made of record before proceeding any further.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620**. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Johann Richter, can be reached on **(571)272-0646**.

The fax phone number for the organization where this application or proceeding is assigned is **(571)273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/John Pak/
Primary Examiner, Art Unit 1616